

1. References: Application/Paragraphs 7 and 8, page 2

Preamble:

In Ref. a) [*Application/Paragraphs 7 and 8/page 2*], the Applicant indicated that due to a change in the location of the proposed site 3 km downstream from the original site (Island Falls) and a change in the nameplate capacity from 20 MW to 16 MW, two studies issued in 2006 will be updated:

- 1) a System Impact Assessment (the "SIA") issued by the Electricity Independent System Operator (the "IESO"); and
- 2) a Customer Impact Assessment (the "CIA"), issued by Hydro One Networks Inc. ("Hydro One").

Question:

Please provide the date when each of the two studies, the SIA and CIA, will be completed by the IESO and Hydro One respectively, and filed with the Board.

Answer

The Island Falls Project was awarded a Renewable Energy Supply II ("RES II") contract by the Ontario Power Authority ("OPA") on 21 November 2005. The RES II procurement process was for projects with generation capacities greater than or equal to 20 mega watts ("MW"). As a result of the relocation of the powerhouse and dam to Yellow Falls, and the corresponding reduction in capacity from 20 MW to 16 MW, the Project will be required to secure an alternative contract for the electricity generated by the Project.

Yellow Falls Power Limited Partnership ("YFPLP") anticipates submitting an application for the Yellow Falls Hydroelectric Project under the OPA's Feed-in-Tariff ("FIT") program which is currently under development and anticipated to be in-place later in 2009. As currently drafted, the FIT program rules will require that any previous SIA's or CIA's that were completed for the Project prior to submission of an application for a FIT contract be rescinded. Accordingly, YFPLP will update, rescind, or otherwise provide the required connection and system information in accordance with the final FIT program rules.

2. References: a) Application/Paragraph 9/page 2;
b) Prefiled Evidence/Tab 12/Request to Elevate
Letter of March 13, 2009 from the Wabun Tribal
Council

Preamble:

- 1) In Ref. A) [*Application/Paragraph 9/page 2*], the Applicant indicated that it has released the Final Environmental Assessment Report for the Project, which is filed in support of this application;
- 2) In Ref. b) [*Prefiled Evidence/Tab 12/Request to Elevate Letter of March 13, 2009 from the Wabun Tribal Council*], the letter is requesting that the project be “Bumped-Up” until consultation and accommodation to three First Nation Communities are completed.

Questions:

- (i) Please indicate whether or not the Applicant has received the EA approval from the Ministry of Environment.
- (ii) If the EA approval has not been received, please provide a description of any steps taken to date to resolve issues, in regard to this application, with the Wabun Tribal Council (“WTC”).
- (iii) Has the WTC made the Applicant aware of any specific Aboriginal or treaty rights that may be adversely impacted by the proposed transmission project? If so, please describe the nature of these concerns and provide any documentation of the Applicant’s communications with the WTC on these issues.

Answer:

- (i) The applicant has not yet received EA approval from the Ministry of the Environment (“MOE”).
- (ii) The WTC have not advised YFLP about any concerns specific to the proposed transmission line. WTC has not indicated to YFLP that there will be any impact on WTC’s Aboriginal or treaty rights specifically related to the transmission line.

Prior to release of the Final Environmental Assessment Report (“Final EA”), filed in support of the application, YFPLP undertook extensive consultations with the WTC as outlined in Section 5.0 of the Final EA. These efforts included:

- a) community meetings (Final EA Section 5.5.4.2, 5.5.4.3) providing project details, outlining regulatory and approvals processes, and collecting community feedback,
- b) Review of the Draft EA Report (Final EA Section 5.5.7), including an offer to provide financial capacity for review of the Draft EA document,
- c) site visits to Yellow Falls (Final EA Section 5.5.4.4) with WTC community representatives,
- d) review of project modification update (Final EA Section 5.5.8); and,
- e) numerous meetings and written and telephone correspondences (Final EA Table 5.3), including provision of detailed project financial estimates and models to WTC representatives
- f) review of the Final EA.

As stated in Final EA (Section 5.6.3, page 153, 5th paragraph), correspondence with the Wabun communities during the EA process has revealed that the Wabun communities consider the Project to be located in their traditional territories. As a result, the WTC communities have stated that the Project must therefore accrue economic benefits to their community. Throughout these consultations, the WTC has stated that they are specifically representing their member communities of Mattagami First Nation, Wahgoshig First Nation, and Flying Post First Nation.

Correspondence with the Mattagami First Nation (“MFN”) (telephone discussion with Chris McKay, MFN, 29 November 2007, letter to Chris McKay, 05 December 2007), indicated that discussions pertaining to environmental and cultural aspects of the Project cannot occur until economic concerns have been addressed. Subsequent clarification from Mr. McKay was received on 10 January 2008 (via telephone) stating that the Mattagami First Nation was not denying consultation, but rather it must be done in conjunction with economic discussions.

As discussed in the Final EA (Section 5.6.3, page 153 final paragraph and page 154 first paragraph) all potential First Nation benefits associated with the Project have been committed to the Taykwa Tagamou Nation through a business to business agreement. Accordingly the Project cannot support an additional agreement with the WTC communities as demonstrated to the WTC through provision of project financial details.

YFPLP has endeavored to facilitate, to the extent possible, discussion between the WTC and the Taykwa Tagamou Nation in an effort to identify benefit sharing possibilities, however to-date an agreement has not been

reached, and an apparent disagreement over traditional territories exists between the parties.

As also confirmed in the Final EA, (Section 5.6.3, page 154, 2nd paragraph), YFPLP remains committed to maintaining communication with the WTC communities regarding the Project design and schedule, and to seek their input regarding potential environmental and cultural effects under the ESP. Since publication of the Final EA and submission of the Request-to-Elevate (“RTE”) on 13 March 2009 no additional information has been received from the WTC related to their concerns.

It is YFPLP’s understanding that the MOE has made efforts to discuss the RTE with WTC. YFPLP has not been asked to participate in these discussions, as it is YFPLP’s understanding that these discussions pertain to potential consultation obligations of the Crown with respect to this Project. To-date the MOE has not indicated that YFPLP is required or recommended to complete any additional consultation activities.

- (iii) Based on the discussions and correspondence to-date with WTC, YFPLP is not aware of any WTC aboriginal or treaty right impacts specifically related to the proposed transmission line. The WTC communities have indicated that the Project is located within their traditional territories. As described in the Final EA (Section 5.6.3, page 154, 2nd paragraph), during discussions undertaken with the WTC communities, the Mattagami First Nation and Flying Post First Nation communities have indicated that they have traditionally used the Mattagami River area in the vicinity of Yellow Falls for fishing, hunting and trapping. The transmission line is not anticipated to have a significant effect on fishing, hunting and trapping activities in the area.

The Mattagami First Nation provided a copy of a 1928 letter to a Dr. Frank Speck indicating the author’s opinion that the area surrounding Yellow Falls was used previously by Mattagami community members. The letter is provided in the Final EA Report (Appendix A10). The 13 March 2009 letter from the WTC to the MOE states that Ontario and the Proponent have violated the aboriginal and treaty rights of three First Nations. Notwithstanding this opinion, the WTC has not articulated what treaty rights are being violated, or how these rights are being violated. Accordingly, there has been no ability to mitigate these concerns through modifications to Project’s construction or operation mitigation measures.

To-date WTC has not identified to YFPLP which specific treaty rights they believe may be infringed upon.

3. References: a) Pre-filed Evidence/page 16 of 28/lines 10-16

Preamble:

In Ref. a) [*Pre-filed Evidence/page 16 of 28/lines 10-16*], the Applicant stated that YFPLP will obtain tenure for the land needed to construct the CTS, the dam/powerhouse and the service building under a **Waterpower Lease Agreement with the Ministry of Natural Resources (MNR)**". In order to construct the proposed 115 kV transmission line and the CSS, YFPLP will require **work permits and land use permits from the MNR under the Public Lands Act**. YFPLP has started discussions with MNR and it is expected that the lease and permits will be obtained following completion of the harmonized environmental assessment under Ontario Regulation 116/01 and the MNR Waterpower Program Guidelines.

Questions:

- (i) Please provide a summary of the status of the Waterpower Lease Agreement with the Ministry of Natural Resources (MNR).
- (ii) Please provide a summary of the status of:
 - a) The harmonized environmental assessment under Ontario Regulation 116/01 and the MNR Waterpower program Guidelines; and
 - b) Land use permits, dates of application and expected response, which the applicant is seeking to obtain from the Ministry of Natural Resources under the Public Lands Act.

Answer:

- i) The Waterpower Lease Agreement is an agreement for long-term tenure that will be executed at the start of commercial operation of the Project. It is anticipated that the agreement will be drafted during the later stages of construction of the Project. Interim tenure to support construction is provided by way of a Crown Lease from the MNR. The Crown Lease will be issued following completion of the provincial EA in concert with *Lakes and River Act* approvals for the Project.
- ii) a) The harmonized environmental assessment under O.Reg 116/01 and the MNR Waterpower program Guidelines (as represented by the Final EA) was released for stakeholder and First Nations review and

comment on 18 February 2009. On 13 March 2009, the WTC submitted their RTE requesting that the Ministry of the Environment 'Bump-up' the Project to an individual environmental assessment. The Director of the MOE's Environmental Assessment and Approvals Branch (the "Director") is currently reviewing the WTC's request. Discussions with WTC related to the RTE have been undertaken by the MOE.

b) Completion of the provincial EA process under O. Reg 116/01 is required prior to issuance of any permits by the MNR. In anticipation of wrap-up of the EA process in Q3/Q4 2009, YFPLP is assembling the requisite design information to support applications to the MNR for the required work permits land use permits under the *Public Lands Act*. Permit applications will be submitted sequentially to reflect the construction sequence (i.e. Project components to be constructed first will be submitted first). Initial Land Use permit applications for the proposed transmission line infrastructure is anticipated to be submitted in Q4 2008, with permits being issued to support construction activities in Q1 2010. Land Use permits applications for the dam and powerhouse and headpond are anticipated to be submitted in early Q1 2010 with permit issue targeted for early Q2 2010.

4. References: a) Prefiled Evidence/from page 17, line 4 to page 18, line 2

Preamble:

In Reference a), the Applicant outlined four agreements that are in progress:

- 1) YFPLP needs to negotiate a road sharing agreement with Tembec in regard to use and maintenance of Red Pine Road;
- 2) YFPLP needs to obtain all necessary authorizations from TCPL in order for the proposed line to cross an existing natural gas pipeline right-of-way;
- 3) Crossing of the proposed transmission line and the improved access road over a rail line owned by the Ontario Northland Railway Commission and require its authorization;
- 4) Permits for the proposed transmission line to cross Highway 11 require permits which may also include encroachment permit, land use permit and entrance permit.

Question:

Please provide a summary of the status of each of the four main agreements outlined in Ref a) and listed above in the "Preamble" [items (i) to (iv)], indicating where appropriate the dates of the application and expected response.

Answer:

- 1) Development of a road sharing agreement with Tembec is underway. Execution of the road sharing agreement is anticipated to occur in Q4 2009.
- 2) Early in the Project development process, YFPLP contacted TCPL regarding the proposed transmission line crossing of TCPL's infrastructure. YFPLP has not identified any significant concerns regarding the required crossing. YFPLP will obtain all necessary authorizations from TCPL prior to construction of the transmission line crossing of the natural gas pipeline right-of-way.
- 3) YFPLP and Ontario Northland Railway Commission executed a crossing agreement for the Project on 07 December 2007.
- 4) Ministry of Transportation has been consulted regarding the Project and the need for encroachment and entrance permits has been confirmed. Application for MTO permits to support the powerline crossing will be submitted in Q4 2009 to support Q1 2010 construction activities.